

ILLINOIS POLLUTION CONTROL BOARD
May 6 , 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-453
)
 JOHN MURRAY, JAMES MURRAY AND)
 BETTY MURRAY,)
)
 Respondents.)

Mr. Steven Watts, Assistant Attorney General, appeared
for Complainant.
Mr. Harold E. McCabe appeared for Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This case comes before the Board upon a complaint filed December 1, 1975 by the Environmental Protection Agency (Agency) alleging that John Murray, James Murray and Betty Murray operated or caused to be operated a solid waste management site of approximately 40 acres located in the west one-half of the Southeast quarter of Section 16, Township 16 North, Range 5 West, in Sangamon County, Illinois. It is also alleged that Respondents have since June 8, 1973 to the date of filing the complaint, failed to place a final cover on the solid waste management site in violation of Rule 305(c) of the Solid Waste Regulation.

A hearing was held January 30, 1976 at Springfield, Illinois. A Request for Admissions had been filed on January 6, 1976 by the Agency. There was no response to the Request prior to the hearing. At the hearing the Hearing Officer allowed the Respondents to answer. James Murray and John Murray admitted operating a landfill and denied failing to put final cover over the final lifts of the solid waste management site (R.21,26). The third Respondent, Betty Murray, did not appear and counsel for the Agency made a motion that Betty Murray be found in default. The record shows no proof of service as required by Procedural Rule 305, i.e. properly executed receipt of registered or certified mail or affidavit of person making personal service. Without proof of service the Board cannot find Betty Murray in default under Procedural Rule 320.

The facts at the hearing developed to show that the land in question is owned by James P. Murray (R.93) and Betty Murray (R.111). James Murray and his brother John R. Murray have a verbal agreement that John was to fill in the land with "rock and stuff" (R.96,109). John Murray estimated the operation "on that corner" had gone on for 22 years or more and on James Murray's land for eight, ten or twelve years (R.110). This operation also included Betty Murray's land (R.112). On Betty Murray's land, John Murray stores concrete that he sells for road use and to the park (R.121, 122). On James Murray's land some of the areas are completed which includes cover (R.123,124). There are about three or four more acres James wants filled in and John continues to work on the area(R.124).

Gilbert E. Stauffer is an Agency inspector and visited the site on twelve or thirteen different occasions (R.48). On July 19, 1974 he visited the site (R.48) and observed two trucks at the site, one entering and one leaving; the entering truck was loaded primarily with concrete (R.49,50). The witness did not actually observe any dumping (R.50). In a November 1974 visit the site appeared closed, but three separate areas equalling approximately 20 acres needed cover (R.57,58). On September 17, 1975 the site appeared closed with the same three uncovered areas (R.59). On September 23, 1975 Stauffer observed "small random or promiscuous dumping" (R.60). Two days prior to the hearing, January 28, 1976, Mr. Stauffer observed "a considerable amount of earthen materials hauled into the southwest portion of the site" (R.61).

John Murray testified that the material going into the site is demolition, bricks and rock (R.21). The putrescible materials appear to be small pieces of lumber (Ex. No. 3).

This testimony indicates that the uncovered areas of the landfill are still in use. The alleged violation is that of Rule 305(c) of the Solid Waste Regulations which provides for a compacted two foot layer of suitable material to cover the entire surface of each portion of the final lift not later than sixty days following placement of refuse in the final lift. The Agency has failed to prove that which if any of the uncovered portions of the site are complete and which would need final cover. Mr. John Murray has stated he is still adding to the fill and this is substantiated by

Mr. Stauffer's statements. It appears there is no daily or intermediate cover and that the Murrays do not have an operating permit from the Agency. However, these violations are not alleged in the complaint and not properly brought before the Board at this time. The Board does find that the pleadings do not conform to the proof presented at the hearing and no violation can be found concerning James Murray and John Murray. The Board cannot require final cover on that portion of the landfill that is still in active use.

This constitutes the Board's findings of fact and conclusions of law.

ORDER

It is the order of the Pollution Control Board that:

The alleged violations of Rule 305(c) of the Solid Waste Regulations by James Murray, John Murray and Betty Murray are dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted the 6th day of May, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board